MEMORANDUM OF LAW

yymmdd

DATE: August 11, 1989

TO: Steve Lerner, Assistant to Mayor O'Connor

FROM: City Attorney

SUBJECT: De Anza Mobilehome Park - Relocation and Redevelopment Issues

By memorandum dated July 19, 1989, copy attached as Attachment 1, you referred to a recent news article related to the proposed hotel redevelopment in the De Anza/Campland area of Mission Bay Park.

You asked whether the statement in the news article attributed to Mr. Michael Gelfand, representing De Anza, that the City must either approve the redevelopment or face an obligation to pay relocation to the tenants, is correct. You also asked for our comments as to "any legal constraints that exist that pertain to future development on ┌theσ site" and whether the original grant from the state contains provisions "which limit the types of uses of park land in Mission Bay Park."

RELOCATION ISSUES

In answer to the question regarding relocation, this office has, in the past, reflected on the potential liability to pay relocation costs upon expiration of the De Anza Mobilehome Park lease. We have concluded that the City would not be obligated to pay relocation costs to the tenants upon expiration of the lease. A specific case on this issue in California is Stevens v. Perry, 134 Cal.App.3d 748, 184 Cal.Rptr. 701 (2d District 1982). In that case, the court held that residents of a mobilehome park located on land leased from a municipal district were not entitled to relocation benefits pursuant to the provisions of Government Code section 7260 et seq. (which constitute the California relocation assistance law) upon the expiration of the lease.

The court's conclusion was based upon the fact that the displacement of the tenants did not occur as a result of the

acquisition of the property by a public entity for public use, which is the standard set forth in the Government Code.

The 1982 decision has not been modified, reversed or overruled. However, California Government Code section 65863.7 is an additional law which deals specifically with relocation resulting from conversion of a mobilehome park to another use. The section, effective since 1981, allows the City Council, at

its option, to require the person proposing a mobilehome park conversion "to take steps to mitigate any adverse impact of the conversion on the ability of displaced mobilehome park residents to find adequate space in a mobilehome park."

Section 65863.7 is part of Chapter 4 of Division 1 of Title 7 of the Government Code, which chapter, as specified in section 65803, "shall not apply to a chartered city, except to the extent that the same may be adopted by charter or ordinance of the city."

However, 1986 legislation added a provision specific to section 65863.7 as follows:

> (h) This section is applicable to charter cities.

In 1988, an amendment to section 65863.7 was proposed and ultimately enacted.

The 1988 addition provides as follows:

> (i) This section is applicable when the closure, cessation, or change of use is the result of a decision by a local governmental entity or planning agency not to renew a conditional use permit or zoning variance under which the mobilehome park has operated, or as a result of any other zoning or planning decision, action, or inaction. In this case, the local governmental agency is the person proposing the change in use for the purposes of preparing the impact report required by this section and is required to take steps to mitigate the adverse impact of the change as may be required in subdivision (e).

The above change in the state statute, which became effective January 1, 1989, has apparently led Mr. Gelfand to conclude that the City would now have some obligation to mitigate the adverse impacts which may result to the mobilehome park tenants if they remain on the leasehold property until 2003. It should be noted that the City's lessee has proposed to carry the burden of any relocation costs which may result from a redevelopment of the De Anza leasehold area as proposed by Mr. Gelfand.

This office does not agree with Mr. Gelfand's conclusion that the 1988 amendment to section 65863.7 would create an obligation on the part of the City to pay relocation to the De Anza tenants in 2003. Our conclusion is based upon the fact that the mere expiration of a long term lease does not constitute "a decision by a local governmental entity . . . not to renew a conditional

use permit or zoning variance under which the mobilehome park has operated" nor is it "a result of any other zoning or planning decision, action, or inaction." All of the decisions specified in the statute are discretionary, whereas, in the City's fact situation, the City Council, as discussed below, will have absolutely no authority to allow the continued mobilehome park operation after the year 2003.

In addition, since the other provisions of section 65863.7 relating to the voluntary conversion of a mobilehome park to another use by a private owner merely allow a city the option of requiring mitigation measures from such private owner, it is not logical to read the amended provision as making such mitigation mandatory with regard to a local governmental agency which presumably, in the furtherance of protection of the public health, safety and welfare of its citizens, determines not to renew a conditional use permit or other such permit for a mobilehome park.

Also, a charter city's zoning laws, as reflected by the general exemption contained in Government Code section 65803, are matters of municipal concern and as a charter city San Diego cannot be preempted by the state law in managing its own zoning and planning affairs. The mere fact that the legislature enacts a statute purporting to make a particular zoning law applicable to charter cities, does not necessarily control, in view of the state constitutional provision which cannot be modified by the legislature which guarantees to a charter city control over its own municipal affairs in all areas where such affairs are not "matters of statewide concern."

We must add one significant caveat to the above decision. Despite the fact that we have concluded that the City is not presently mandated by law to make any relocation payments to De Anza Mobilehome Park residents upon expiration of the lease in 2003, we are concerned that between now and 2003 state

legislation could possibly be adopted requiring, or at least purporting to require, the City to make such relocation payments. The issue involving municipal affairs of a charter city versus "matters of statewide concern" which are subject to legislative regulation, is far from clear, and it is possible that a court could conclude that a subsequent state law regarding relocation payments for mobilehome park tenants is a matter of statewide concern.

TYPES OF USES ALLOWED IN MISSION BAY PARK

With regard to the second issue, attached as Attachment 2 is a copy of chapter 142 of the California statutes of 1945.

Chapter 142 conveyed all the tidelands in Mission Bay to the City. Approximately 85 percent of the De Anza Mobilehome Park leasehold is within the tidelands grant area and is subject to the provisions of chapter 142. ┌The other 15 percent was conveyed to the City by the state for park and recreation use.σ You will note that the tidelands grant basically requires the City to operate and maintain the tidelands for tidelands purposes which specifically include "recreational" purposes. In 1965 the City by ordinance officially dedicated Mission Bay Park to park and recreation use pursuant to section 55 of the City's Charter. Therefore, the City may now utilize the tidelands in Mission Bay Park only for park and recreation purposes in the absence of a two-thirds vote of the electorate approving some nonpark use. Residential use of the De Anza area by permanent residents is not a valid tidelands use nor is it a legal use of dedicated public park property.

Since the De Anza lease was entered into in 1953 and, therefore, precedes the dedication of the property to park use, it has been considered by this office a "grandfathered" use for the remaining term of the original lease, i.e., until 2003. Having a "grandfathered" status under the 1965 park dedication, however, did not resolve the issue that the present use was an invalid use of the tidelands. This fact resulted in a bill sponsored by then Assemblyman Kapiloff in 1982, a copy of which is attached as Attachment 3. The "Kapiloff" bill, AB 447, specifically allows the continued mobilehome park use at De Anza Cove for the period ending November 23, 2003, and provides, in addition, that "on and after November 23, 2003, the lands shall be developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981." Therefore, at the end of the year 2003 three basic provisions shall apply to the De Anza property:

1. The property must be used for the tidelands purpose of recreation under chapter 142 of the 1945 statutes.
2. The property must be used for park and recreation purposes pursuant to the 1965 ordinance of the City Council dedicating Mission Bay Park to park and recreation use.
3. In the absence of some additional state legislative action the property must be "developed for park and recreation purposes consistent with the master plan for Mission Bay Park in effect on August 11, 1981."

A copy of the pertinent portion of the Mission Bay Park Master Plan in effect on that date is attached as Attachment 4.

You will note that the master plan calls for the De Anza area

to be used for "Guest Housing" which is the designation used in the plan generally for hotel developments, until expiration of the lease. After the lease expires the master plan indicates that the De Anza area "designation should be changed to Park and Shoreline unless a viable alternative proposal has been presented to modify ┌theσ existing development and provide greater public access to the De Anza Shoreline." Therefore, in the absence of some additional state legislation, it appears that the De Anza area may be redeveloped with a viable park commercial use, such as a hotel, if "a viable . . . proposal" for such commercial use is presented to the City before the end of the lease term. Otherwise, in the absence of additional state legislation, only general "park and shoreline" uses will be allowed after 2003.

The basic legal distinction which allows a hotel but not a mobilehome park on tidelands and dedicated park property is that hotels provide temporary accommodations to park and tidelands visitors. In a large park such as Mission Bay Park, the courts have upheld such temporary accommodations as a proper park use.

Finally, it is important to note that at the end of 2003 it will not be legally possible to continue the existing mobilehome use by merely having another authorization of such use by the state legislature. Since the property has been dedicated to park use, the nonpark use of the property under the "grandfathered" lease cannot be extended in the absence of a two-thirds vote of the electorate.

JOHN W. WITT, City Attorney
By
Harold O. Valderhaug
Deputy City Attorney

HOV:ps:731.7(x043.2)
Attachments 4
ML-89-80